

Remarks

Claims 1-16 are pending in this application. Claims 1, 5, and 6 are amended herein. Support for these amendments is found at page 5, lines 15-17. Claims 8-16 are new. Support for claim 8 is found at page 12, line 22, through page 13, line 6. Support for claim 9 is found at page 10, line 1, through page 12, line 5. Support for claim 10 is found at page 5, lines 9-11. Support for claim 11 is found at page 12, lines 8-9. Support for claim 12 is found at page 14, lines 14-20. Support for claim 13 is found at page 14, lines 20-22. Support for claim 14 is found at page 14, line 22, through page 15, line 2. Support for claim 15 is found at page 15, lines 11-12. Support for claim 16 is found at page 15, lines 5-7. No new matter is added to the application by virtue of these amendments.

I. Response to Rejection under 35 U.S.C. § 112, Second Paragraph

Claim 5 was rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter that Applicants regard as the invention. More particularly, the Office Action alleged that claim 5 recited insufficient antecedent basis for "the first layer."

Claim 5 has been amended to substitute "thin film polymer layer" for "first layer." Antecedent basis for "thin film polymer layer" is found on line 2 of claim 5. Therefore, the ground of

rejection has been obviated, and withdrawal of the rejection is respectfully requested.

II. Response to Rejections under 35 U.S.C. § 103(a)

A. Legal Foundation for Examination under 35 U.S.C. § 103(a)

Before responding directly to the issues raised by the Office Action under Section 103, the legal foundation for sustaining such a rejection will be reviewed. Briefly, an applicant for a patent is entitled to the patent unless the application fails to meet the requirements established by law. 35 U.S.C. §§ 101, 102, 103, 112. It is the USPTO's duty to issue a patent or establish that the applicant is not entitled to a patent under the law. *In re Warner*, 154 USPQ 173, 177 (CCPA 1967), *cert. denied*, 389 U.S. 1057 (1968). Thus, the initial burden is on the USPTO to establish a *prima facie* case of obviousness. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). If no *prima facie* case of obviousness is established, then a rejection under Section 103 cannot properly be sustained. *In re Oetiker*, 24 U.S.P.Q.2d 1443 (Fed. Cir. 1992). If the USPTO establishes a *prima facie* case of obviousness, then the burden of production shifts to the applicant to provide appropriate rebuttal, but the burden of persuasion always remains with the USPTO. *Id.* Such rebuttal may include arguments, amendments, and/or presentation of objective indicia of nonobviousness. However, such objective indicia are always relevant to a determination of nonobviousness whether or not a *prima facie* case

of obviousness has been established. *Stratoflex Inc. v. Aeroquip Corp.*, 218 U.S.P.Q. 871, 879 (Fed. Cir. 1987). To establish a *prima facie* case of obviousness, the USPTO must show all of the limitations of the claimed invention in the prior art. *In re Ehrreich*, 200 U.S.P.Q. 504, 509-11 (C.C.P.A. 1979). The subject matter of the invention must be considered as a whole and through the eyes of a hypothetical person of ordinary skill, not expert skill, in the relevant art at the time the invention was made. *Connell v. Sears, Roebuck & Co.*, 220 U.S.P.Q. 193, 199 (Fed. Cir. 1983). References must also be considered as a whole, including subject matter that teaches away from the invention as well as subject matter that suggests the invention, and not for their isolated teachings. *Ashland Oil, Inc. v. Delta Resins & Refractories, Inc.*, 227 U.S.P.Q. 657, 669 (Fed. Cir. 1985). References may be combined if it would be obvious to a person of ordinary skill in the art to do so. It is not permissible to use hindsight to pick and choose among isolated teachings in the art after first having read Applicant's application to learn the pattern of the invention. *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596, 1600 (Fed. Cir. 1988). Finally, all the facts in evidence are evaluated, and patentability is determined on the totality of the record. *In re Corkill*, 226 USPQ 1005, 1008 (Fed. Cir. 1985). Factual determinations made by the USPTO must be based on a preponderance of the evidence, and legal conclusions must be correct. *In re Caveny*, 226 USPQ 1, 3 (Fed. Cir. 1985).

Pursuant to established legal authority, patentability under 35 U.S.C. § 103 requires a four-step analysis, which involves determining (1) the scope and content of the prior art, (2) the differences between the prior art and the claimed inventions, (3) the level of skill in the art, and (4) the objective evidence of nonobviousness that may have been presented. *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). After all of these factors have been considered, the ultimate legal conclusion on the issue of obviousness must be reached. With the above background in mind the rejections under 35 U.S.C. § 103 will be discussed.

B. Factual and Legal Analysis

1. Response to Rejection of Claims 1-7 over 20020091433 (Ding) in view of U.S. Patent No. 6,251,142 (Bernacca)

Claims 1-7 were rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent Application Publication No. 20020091433 (Ding) in view of U.S. Patent No. 6,251,142 (Bernacca).

Neither Ding nor Bernacca, alone or in combination, discloses a hydrophobic heparinized polymer comprising a macromolecule, a hydrophobic material, and heparin bound together by covalent bonds. Therefore, this combination of references fails to disclose each and every limitation of the presently claimed invention. Therefore, a *prima facie* case of obviousness has not been established with respect to any of claims 1-7. Accordingly, withdrawal of the rejection of claims 1-7 under Section 103(a) over Ding and Bernacca is respectfully requested.

2. Response to Rejection of Claims 1-7 over U.S. Patent No. 5,833,651 (Donovan) in view of U.S. Patent No. 6,258,121 (Yang) and U.S. Patent No. 6,251,142 (Bernacca)

Claims 1-7 were also rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over U.S. Patent No. 5,833,651 (Donovan) in view of U.S. Patent No. 6,258,121 (Yang) and Bernacca.

None of Donovan, Yang, or Bernacca, alone or in combination, discloses a hydrophobic heparinized polymer comprising a macromolecule, a hydrophobic material, and heparin bound together by covalent bonds. Therefore, this combination of references fails to disclose each and every limitation of the presently claimed invention. Therefore, a *prima facie* case of obviousness has not been established with respect to any of claims 1-7. Accordingly, withdrawal of the rejection of claims 1-7 under Section 103(a) over Donovan, Yang, and Bernacca is respectfully requested.

C. Conclusion

In view of the lack of a *prima facie* case of obviousness with respect to any of claims 1-7, withdrawal of the grounds of rejection over Section 103(a) is respectfully requested.

III. Summary and Conclusion

Should the Examiner deem it advisable to conduct a telephone interview for any reason, the undersigned attorney would be most agreeable to receiving a telephone call to expedite the prosecution of the application.

Appl. No. 10/797,629
Amendment dated December 21, 2007
Reply to Office Action of September 21, 2007

For the reasons given above, Applicants respectfully request reconsideration and allowance of Claims 1-7 and passage of this application to issue.

DATED this 21st day of December, 2007.

Respectfully submitted,



Alan J. Howarth, Ph.D.
Attorney Registration No. 36,553
Customer No. 020450

Clayton, Howarth & Cannon, P.C.
P.O. Box 1909
Sandy, UT 84091
Telephone: (801) 255-5335
Facsimile: (801) 255-5338

S:\CHC Files\T 9--\T99--\T9983\A\Amendment.12212007.wpd